

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Norris C. Bakke, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

1. Carrier violated the Clerks' Rules Agreement when it temporarily assigned Rate Clerk Fred Roessger to a higher rated position and denied him the higher rate of the position to which he was temporarily assigned.

2. Carrier shall compensate Employee Fred Roessger for the period July 20th to July 31st, 1953 the difference between what he was paid and the higher rate applicable to the position to which he was temporarily assigned.

**EMPLOYEES' STATEMENT OF FACTS:** Employee Fred Roessger is regularly assigned to Position No. 450, Rate Clerk at Fowler Street, Milwaukee, Wisconsin. The assigned hours are from 8:00 A.M. to 5:00 P.M. The assigned days are Monday through Friday. The rate of pay of Position No. 450 is \$15.43 per day. The duties of that position consist of rating and revising all grain and livestock, assessing charges on all weighing and reweighing inbound carloads, revising and rating inbound packages for the breweries, filing tariffs and other related work.

Employee Frank Schlosser is regularly assigned to Position No. 442, Chief Rate Clerk at Fowler Street, Milwaukee, Wisconsin. Position No. 442 is assigned to work from 8:00 A.M. to 5:00 P.M. Monday through Friday. Rate of pay is \$17.17 per day. The duties of Position No. 442 consist of revising and rating all fruit waybills and all other miscellaneous carloads, revising of all commodities for the inbound carloading companies, making corrections pertaining to inbound carloads and other related work.

Due to the type of work assigned to these two positions, certain duties of each position were required to be performed daily.

Employee Frank Schlosser was absent from work from July 20th to September 1st, 1953, account of illness. As provided in Memorandum of Agreement No. 2, commonly referred to as the Sick Leave Agreement, he

"Rule 17 (d) intends that when an employee is absent by reason of sickness and he is paid under the sick leave agreement (Memorandum Number 22) and there is no position blanked in that office which would cause a decrease in the office payroll expense as a result of the sickness, other employees performing the work of the absent employee will not be paid other than their regular rates regardless of the rate of the position of the absent employee."

Memorandum No. 2 (Sick Leave Agreement) was formerly identified as Memorandum No. 22.

A sustaining award of the claim presented here by the employees would place a new application upon the rule and we submit it is not the function of your Honorable Board to render an award which will have the effect of writing a new rule or changing the prevailing application of an existing rule.

Although the employees contend that Position 450 was blanked, that was not the case for Claimant Roessger remained assigned to Position 450 up to July 31, 1953 and he was paid on that position. It was not blanked. It is true Claimant Roessger performed some work of Position 442 during his assigned hours, which was contemplated by Rule 17—and specifically by the provisions of Paragraph (d) of that rule. He received his regular rate of pay for the work performed on Position 450. He also performed some work of Position 442 outside of his assigned hours for which he was paid at the overtime rate based upon the rate of Position 442.

Neither Position 442 nor Position 450 was blanked during the 10 day period involved in this case in accordance with the intent of Rule 17 (d). Employee Schlosser was paid his regular daily rate for that 10 day period as was Claimant Roessger. With no assignment blanked, in accordance with the provisions of Rule 17 (d), it was entirely proper that Claimant Roessger receive only the rate of his own position during that 10 day period.

There is no sensible reason why the Carrier should (in addition to paying employee Schlosser his regular daily rate of pay while absent due to illness and then paying at least 28 additional hours overtime to employee Roessger because of employee Schlosser's absence) be required to undergo an additional penalty payroll expense for the difference between the rate of Position 450 and the rate of Position 442, with the rate of the latter position applying on each of the 10 days involved to employee Schlosser.

The question to be resolved in this case is whether or not, under the provisions of Rule 17 (d) (with the provisions of Memorandum No. 2 in mind and with all employees being paid their regular daily rates of pay) the Carrier is to be subjected to further penalty expense representing the difference between the rate of one position and the higher rate of another position assigned to an employee absent due to illness while the latter employee is paid his regular daily rate of pay. It is the Carrier's position that Rule 17 (d) clearly intends that the Carrier shall not be so subjected to such additional penalty expense and under such circumstances a denial award is in order.

There is no basis for this claim and we respectfully request that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The rule involved in this dispute is 17 (d) which states:

"(d) The provisions of this rule do not apply to employees performing work of an employee absent by reason of sickness when sick leave payment is allowed and when none of the regular assignments in the office, in which is located the assignment of the employee

absent account of sickness, is blanked by the Carrier." (Emphasis ours.)

Employees state:

"Under the provisions of Rule 17(d) there are two conditions which the Carrier must meet before it is privileged to deny the higher rate to an employee assigned to a higher rated position. Those conditions being:

1) That sick leave payment is allowed to the employee absent account of sickness.

2) That none of the regular assignments in the office in which is located the assignment of the employee absent account of sickness is blanked by the Carrier.

"In the instant case the Carrier met the first condition but failed to meet the second. Therefore, the Employees contend that Rule 17(d) would not be applicable but that Rule 17(a) (which calls for the higher rate of pay and upon which Claimant relies) would be controlling." (Parenthesis supplied.)

Further quoting from employees:

"Apparently what actually occurred was that Employee Roessger was instructed to perform the essential duties of both Position No. 450 and Position No. 442 and as he was unable to perform the necessary work of the two positions during his eight hour tour of duty, he was required to work 2 hours overtime each day. That Employee Roessger performed the essential duties of both positions cannot be denied." \* \* \*

Employees further contend that:

"Roessger, by assuming and performing the major duties and responsibilities of Position No. 442, actually filled that position and therefore, his regular position No. 450, was unoccupied, vacant and unfilled—consequently, blanked. Having filled position No. 442, the Employees contend that Employee Roessger was entitled to the rate of that position in accordance with the provisions of rule 17(a)."

This assumption by the employees is not supported by the record. Even the employees own statement of

"what actually occurred" supra shows that Roessger performed the essential duties of both positions so it cannot be said position No. 450 was "unoccupied, vacant and unfilled—consequently blanked."

Employees submitted three Awards, viz., 2270, 3032 and 4545, this Division, in support of their position. Award No. 4545 was on this same Carrier and cites Awards 2270 and 3032 in its support, but the Award is not controlling because Rule 17(d) was not in effect at the time the claim therein arose.

In Award 7255, a sustaining Award we said:

" \* \* \* A position is blanked only when no one works it. This position was not blanked, because it appears that another performed some of the duties of the position although some were deferred, on both of the two rest days in question.

"Since the Carrier elected to fill the position, it should have been worked under the conditions upon which the sick Relief would have worked it." (Emphasis ours.)

In the instant case we think the Carrier followed the admonition of the emphasized language just quoted.

Our conclusion is that the Carrier did not violate the Agreement, and that the claim must be denied.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1958.